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From: Springer, David [DSPRINGE@skadden.com]
Sent: Wednesday, April 26, 2006 12:35 PM
To: Fox, Edward M.
Cc: Jerman, Tom; Butler, Jr., John (Jack) Wm; Mark.Broude@lw.com
Subject: Delphi -- WTC's Discovery Requests re Section 1113/14 Motion
Attachments: LettertoEdFox.pdf

Dear Ed,

Please see the attached responding to WTC's discovery requests.

Best regards,

David E. Springer
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Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

05/05/2006

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April 26, 2006

Edward M. Fox, Esq.
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RE: In re Delphi, Inc., et al., No. 05-44481 (RDR), WTC's
discovery requests in connection with the Debtors'
Section 1113/14 Motion

Dear Ed:

I write with respect to the discovery requests directed to the Debtors by Wilmington Trust Company, as indenture trustee (WTC), relating to the Debtors' Section 1113/14 Motions. The Debtors will not agree to entertain formal discovery requests by WTC in connection with the Motions, but they are prepared voluntarily to provide some information to WTC, subject to designation of such materials as "highly confidential" under the extant protective order with WTC, and with a full reservation of rights (including no prejudice to the Debtors' right to strike WTC's objections to the Motion), on the following terms and conditions:

1. The Debtors would issue a limited number of passwords for WTC's professionals to review the Section 1113/1114 information database that has been established by the Debtors and which the Debtors believe contains relevant Section 1113/1114 information.
2. To the extent that the unions under the collective bargaining agreements or the Debtors schedule depositions of each others' witnesses, the Debtors' would permit WTC to attend such depositions and to have access to the deposition transcripts. All

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such depositions are subject to time limitations based on the meet and confer agreements between the unions and the Debtors.

3. To the extent that the unions under the collective bargaining agreements or the Debtors exchange documentary discovery between them, the Debtors would provide copies to WTC.

You should understand that our view of WTC's standing to objection to the Motions, and therefore the validity of its preliminary objection and discovery requests, is informed by the Seventh Circuit's decision in the IFS case, *In re UAL Corp. (IFS)*, 408 F.3d 847 (7th Cir.2005). This decision, written by Judge Easterbrook, involved (1) a request to participate in the hearing rather than the 1113 negotiations; and (2) an analysis of the statutory language, including the definition of "interested party." IFS was the independent fiduciary appointed by United for its defined benefit pension plans, and it sought to participate in the 1113 hearing on the theory that it was obligated to defend the interests of the beneficiaries. Judge Easterbrook's succinct analysis is worth quoting in full. After finding that IFS had the right to seek an interlocutory appeal of the ruling denying its request to participate in the hearing, he wrote:

The merits are easier. Although the Bankruptcy Code does not define the term "interested party," and no appellate decision has addressed its meaning, it is most naturally read to mean "party to the collective bargaining agreement" or a guarantor of that contract. IFS wants us to treat it as equivalent to the term "party in interest" under § 1109(b), on which *see FutureSource LLC v. Reuters Ltd.*, 312 F.3d 281, 284 (7th Cir. 2002), and thus as including any person with a financial stake in the employer's performance of the collective bargaining agreement, but that would make § 1113 proceedings unmanageable. Section 1109(b) defines who is a party to the bankruptcy; the set of "interested parties" for particular purposes such as § 1113 must be its subset. Otherwise every employee individually would have to be notified and allowed to participate when the employer proposes to reject a collective bargaining agreement, though for every other purpose the union acts as the employees' representative; more, every retiree would receive separate notice and an opportunity to be heard; tax collectors, unsecured creditors that might gain if the debtor altered its obligations to labor-the list would go on and on.

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Labor and management are free to change their agreements without any complaint by individual workers or pensioners-or for that matter by other third-party beneficiaries, including pension fiduciaries. What labor and management may do voluntarily, the court may accomplish in a § 1113 proceeding. There is no reason to include in the § 1113 proceeding any person or entity whose consent would be unnecessary to a voluntary change in the agreement. All of the legally protected interests are represented by labor, management, and the Pension Benefit Guaranty Corporation. Because IFS is not entitled to block a change in the collective bargaining agreements, it also is not entitled to participate in the litigation as an "interested party."

In a subsequent decision in the UAL cases, the Seventh Circuit relied on its earlier opinion for the proposition that only parties to the collective bargaining agreement, and guarantors under the agreement, may participate in the § 1113 proceedings.

Accordingly, the Debtors do not believe that WTC has standing to object or take discovery in connection with the Section 1113/1114 Motion.

Please let me know whether the voluntary approach that I outlined at the beginning of this letter is acceptable to WTC in lieu of any other discovery.

Sincerely,

/s David E. Springer

David E. Springer